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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 HP TUNERS, LLC,

7 Plaintiff,

8 v.

9 KEVIN SYKES-BONNETT, et al.,

10 Defendants.

CASE NO. C17-5760 BHS

ORDER GRANTING PLAINTIFF'S
MOTION FOR SANCTIONS AND
SCHEDULING FEE PETITION

11 This matter comes before the Court on Plaintiff HP Tuners, LLC's ("HP Tuners")
12 motion for sanctions. Dkt. 124. The Court has considered the pleadings filed in support
13 of and in opposition to the motion and the remainder of the file and hereby grants the
14 motion for the reasons stated herein.

15 **I. PROCEDURAL HISTORY**

16 On August 21, 2018, Defendants John Martinson ("Martinson"), Syked ECU
17 Tuning Incorporated ("Syked Tuning"), and Kevin Sykes-Bonnett ("Sykes-Bonnett")
18 (collectively "Defendants") filed a motion for emergency temporary restraining order.
19 Dkt. 69. In the motion, Defendants alleged that an anonymous hacker had provided HP
20 Tuners "with numerous confidential documents illegally obtained from Kevin Sykes-
21 Bonnett." Dkt. 69 at 3. Defendants alleged that HP Tuners possessed "at least two
22 hardware design documents depicting highly confidential schematics and layouts for

1 Syked Tuning’s newest hardware cable product.” *Id.* In support of the motion,
2 Defendants’ counsel John Whitaker (“Whitaker”) submitted a signed declaration
3 declaring in part that an attached exhibit “is a highly confidential hardware schematic
4 detailing parts of Syked Tunings hardware cable product.” Dkt. 71, ¶ 3.

5 On September 25, 2018, HP Tuners took the deposition of Sykes-Bonnett. Dkt.
6 147-1. In that deposition, Sykes-Bonnett testified that Defendants purchased Eliminator
7 Cables from Ken Cannata (“Cannata”) and would then resell the cables to third parties.
8 *Id.* at 45.¹ Sykes-Bonnett testified that Syked Tuning did not secure an exclusive license
9 with Cannata and that it was his understanding that Cannata would also sell the cables to
10 other parties. *Id.* at 46–47. Sykes-Bonnett testified that it was his understanding that
11 Syked Tuning did not own any of the intellectual property involved in the cables. *Id.* at
12 214.

13 On September 26, 2018, HP Tuners took the deposition of Martinson. Dkt. 147-2.
14 In that deposition, Martinson likewise testified that Syked Tuning did not own any of the
15 intellectual property involved in the cables. *Id.* at 82.

16 On November 20, 2018, HP Tuners moved for sanctions arguing that Defendants
17 and Whitaker made material misrepresentations to the Court. Dkt. 124. On December 3,
18 2018, Defendants responded. Dkt. 135. On December 7, 2018, HP Tuners replied. Dkt.
19 136. On January 25, 2019, the Court requested documents HP Tuners cited in support of
20 its motion. Dkt. 142. On January 30, 2018, HP Tuners filed the documents. Dkt. 147.

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22 ¹ Deposition pagination.

II. DISCUSSION

Federal Rule of Civil Procedure 11 states, in pertinent part, that when an attorney presents a signed paper to a court, that person is certifying that to the best of his or her “knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” Fed. R. Civ. P. 11(b)(3). “Rule 11 is governed by an objective standard of reasonableness.” *William Villa v. Heller*, 885 F. Supp. 2d 1042, 1055 (S.D. Cal. 2012) (citing *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830 (9th Cir.1986), *abrogated on other grounds by Cooter & Gell v. Hartmarx, Corp.*, 496 U.S. 384 (1990)). “Rule 11 sanctions must be assessed if the paper[] filed with the court is ‘frivolous, legally unreasonable, or without factual foundation, even though the paper was not filed in subjective bad faith.’” *Id.* (quoting *Zaldivar*, 780 F.2d at 831).

In this case, HP Tuners’ position is relatively straightforward. Whitaker submitted a declaration stating that Defendants possessed highly confidential cable products and certain documents depicted those products. These statements were later proven false by Sykes-Bonnett and Martinson’s depositions. HP Tuners argues that, upon a reasonable investigation, Whitaker could have determined that the cable was not his client’s product and the documents he was referring to did not contain his client’s highly confidential information. The Court agrees with HP Tuners and also finds that Defendants’ arguments are without merit.

1 First, Defendants argue that they are entitled to “Rule 11’s safe harbor provision.”
2 Dkt. 135 at 3–4 (citing *Islamic Shura Council of S. Cal. v. F.B.I.*, 757 F.3d 870, 872 (9th
3 Cir. 2014)). Defendants contend that this provision applies because Rule 11 motions may
4 not be filed after the Court resolves the underlying dispute. *Id.* This argument is
5 completely without merit in this case because the offending document is still on record,
6 and it appears the Defendants made no attempt to retract or correct the document.
7 According to Defendants, as long as the Court decides the motion that is supported by
8 offending documents before the Rule 11 motion is filed, there is no recourse for
9 recklessly or intentionally making a false statement to the Court. This is not the law, and
10 it is at best an absurd argument to contend otherwise.

11 Second, Defendants argue that the confidentiality designation was appropriate.
12 Dkt. 135 at 5–6. While this may be so, this argument at most supports the conclusion that
13 the allegedly confidential schematics depict some party’s intellectual property. The
14 propriety of a confidential designation does not undermine Whittaker’s misrepresentation
15 to the Court. Thus, the argument is without merit.

16 Third, Defendants argue that Whitaker did not mislead the Court because the
17 document he was referring to was marked “confidential.” Dkt. 135 at 7. The fact that a
18 document is marked “confidential” does not necessarily mean that it depicts “a highly
19 confidential hardware schematic detailing parts of Syked Tuning’s hardware cable
20 product.” Dkt. 71, ¶ 3. A reasonable inquiry would have revealed, as Sykes-Bonnett and
21 Martinson testified to in their depositions, that Syked Tuning did not possess a highly
22 confidential hardware product. This argument is also without merit.

1 The court was clearly intentionally or recklessly led to believe that the alleged
2 confidential information was owned by the Defendants. If the Defendants were seeking
3 injunctive relief because of some contractual or other legal obligation to a third party
4 (which they were not) then they would have had an obligation to include such facts in
5 their pleadings when seeking a temporary restraining order. In either case, this was a
6 breach of the Defendants' obligation not to mislead the Plaintiff and the Court. In sum,
7 HP Tuners has proven a clear case of an uncorrected misrepresentation to the Court that
8 could have been avoided with a reasonable inquiry, and is entitled to sanctions.

9 Regarding an award of sanctions, HP Tuners may file a petition for an award of
10 sanctions setting forth its reasonable costs incurred in bringing this motion and
11 responding to Defendants' emergency motion for temporary restraining order, which
12 relied on the offending document. While the Court will not award all fees incurred in
13 responding to the latter motion, the Court will award a reasonable proportion of those
14 fees. The petition shall be filed no later than March 29, 2019 and noted for consideration
15 on the Court's April 12, 2019 calendar. Defendants may respond and address the
16 reasonableness of the requested fees, the egregiousness of the conduct, and Defendants
17 and Whitaker's ability to pay.² *In re Yagman*, 796 F.2d 1165 (9th Cir.1986), *amended*,
18 803 F.2d 1085 (9th Cir.1986), *cert. denied*, 484 U.S. 963 (1987). Any response shall be
19 filed no later than April 12, 2019.

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22 ² The Court recognizes that Defendants have replaced Whitaker, but he is the offending
attorney and shall be subject to these sanctions.

III. ORDER

Therefore, it is hereby **ORDERED** that HP Tuners's motion for sanctions, Dkt. 124, is **GRANTED**.

Dated this 14th day of March, 2019.

A handwritten signature in black ink, appearing to read "Benjamin H. Settle", is written over a horizontal line.

BENJAMIN H. SETTLE
United States District Judge